

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re	)	Case No. 03-37759
	)	Chapter 11
SHARK INDUSTRIES, INC.	)	
	)	
Debtor.	)	
	)	

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**STIPULATED ORDER AUTHORIZING DEBTOR-IN-POSSESSION  
FINANCING PURSUANT TO SECTIONS 364(c) AND 364(d) OF THE  
BANKRUPTCY CODE SECURED BY SENIOR LIENS AND SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS**

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This matter came before the Court on Debtor's continued Motion for an Order Authorizing Use of Cash Collateral; and for an Order Authorizing Post Petition Financing (the "Motion") filed by Shark Industries, Inc. (the "Debtor"). Appearances of counsel were noted in the record. Pursuant to the Motion, and subject in all respects to the terms and conditions hereof, the Debtor seeks: (1) continuing authority to use cash collateral and to obtain debtor-in-possession secured financing (the "DIP Financing") from Wells Fargo Business Credit, Inc. ("Wells Fargo"); (2) continuing authority to use the DIP Financing for the purposes set forth herein; (3) continuing authority to grant to Wells Fargo, pursuant to Section 364(d) of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), as security for the DIP Financing, security interests in and liens and mortgage interests upon all real and personal property of the Debtor or the estate of the Debtor; and (4) authority to grant

superpriority administrative status to Wells Fargo with respect to the DIP Financing pursuant to Section 364(c)(1) of the Bankruptcy Code.

On December 8, 2003, the Court entered its Final Order Granting Expedited Hearing and Authorizing Debtor-in Possession Financing Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code Secured by Senior Liens and Superpriority Administrative Expense Status, authorizing the Debtor, among other things, to use Wells Fargo's cash collateral for a 12 week period terminating on March 2, 2004 and scheduling a final hearing for that date. Wells Fargo objected, among other things, to the Debtor's continued use of its cash collateral. Pursuant to a final hearing on the matter, the Court entered an Order approving a Stipulation (the "First Stipulation") authorizing the DIP Financing which extended such financing to March 2, 2004. The parties further agreed to (i) an additional 60-day extension, and the Court entered a Stipulated Order on March 2, 2004 (the "Second Stipulation") extending the DIP Financing to May 3, 2004, (ii) a further 60-day extension, and the Court entered a Stipulated Order on May 3, 2004 (the "Third Stipulation"), extending the DIP Financing to July 6, 2004 and (iii) a further 60-day extension, and the Court entered a Stipulated Order on July 6, 2004 (the "Fourth Stipulation"), extending the DIP Financing to September 6, 2004.

The Fourth Stipulation provided that on September 7, 2004 the Court would hold a hearing to consider any objection to an extension of such Stipulation.

The parties having discussed the matter at length, have agreed to an additional 60-day extension of such DIP Financing provided that Debtor make additional

availability reserves of \$6,000 each on September 20, 2004 and October 20, 2004 and that Debtor hold the scheduled confirmation hearing on its plan of reorganization on September 29, 2004.

Having considered and reviewed the amended Stipulation, and good cause appearing,

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. This Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(D), (K), (M), and (O).

B. Notice of this hearing was adequate and sufficient under the circumstances pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Bankruptcy Rules.

C. Wells Fargo made certain loans and extended certain other financial accommodations to the Debtor (the “Prepetition Obligations”) pursuant to that certain Credit and Security Agreement originally dated as of May 19, 2000 (as amended, the “Prepetition Credit Agreement”) and a Revolving Note in the original principal amount of \$2,000,000 issued pursuant to the terms of, and subject to the conditions of, the Prepetition Credit Agreement.

D. The Prepetition Obligations are secured by a pledge of all of the Debtor’s right, title and interest in certain tangible and intangible personal property, including, but not limited to, the Debtor’s accounts, equipment, inventory and general

intangibles (the “Prepetition Collateral”), pursuant to a Credit and Security Agreement dated as of May 19, 2000.

E. The Debtor is indebted to Wells Fargo pursuant to that certain real estate construction loan in the amount of \$1,075,000 pursuant to a Construction and Term Loan Agreement and Term Note dated March 2, 2001 and secured by a properly perfected first priority security interest in the real property described therein and an Assignment of Rents dated March 5, 2001.

F. The Debtor has represented to the Court that on a going concern basis, it believes Wells Fargo is fully secured.

G. It is necessary for the Debtor to obtain debtor-in-possession financing for a period of time and in an amount which would allow the Debtor to continue to operate as a going concern and to preserve the value of its assets, and that an immediate need exists for the Debtor to obtain sufficient debtor-in-possession financing without which it will suffer immediate and irreparable harm.

H. The Debtor represents to the Court that the Debtor reasonably believes that it is unable to obtain the needed credit: (i) on an unsecured basis with claims having administrative priority pursuant to Sections 364(a) or 364(b) of the Bankruptcy Code, (ii) on an unsecured basis with claims having priority over all administrative claims of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, pursuant to Section 364(c)(1) of the Bankruptcy Code, (iii) secured by a first lien on unencumbered assets of the Debtor pursuant to Section 364(c)(2) of the

Bankruptcy Code, or (iv) secured by a junior lien on assets of the Debtor pursuant to Section 364(c)(3) of the Bankruptcy Code.

I. The financing approved hereby is necessary to permit the Debtor to continue to operate its business in the ordinary course during this bankruptcy case.

J. Without adequate financing the Debtor will be unable to maintain its operations, preserve and maximize the value of its estate and reorganize its businesses.

K. Pursuant to Bankruptcy Rules 4001(b), (c) and (d), the Debtor has provided such notice as was practicable under the circumstances of the time, place and nature of the hearing on the Motion and the opportunity to object to the entry of this Order. The foregoing notice is adequate and sufficient in light of the nature of the relief requested in the Motion.

L. Good cause has been shown for entry of this Order. Among other things, entry of this Order will minimize disruption of Debtor's business as a going concern, preserve and maintain the assets of Debtor's estate and increase the possibility of a successful reorganization of Debtor's business. Accordingly, entry of this Order is in the best interests of the Debtor and the Debtor's estate.

ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Debtor shall be and hereby is authorized to obtain and use the DIP Financing as follows: the Debtor is authorized to obtain advances consistent with the budget attached hereto, so long as such advances do not exceed the form borrowing base attached hereto as Exhibit A, and are otherwise consistent with the terms contained in the Prepetition Credit Agreement, minus amounts outstanding hereunder and under the

Prepetition Credit Agreement and (b) requiring the Debtor to deposit all cash collateral in its possession or under its control into existing accounts consistent with past practices under the Prepetition Credit Agreement) to be applied to prepetition debt and readvanced hereunder for the payment of the actual and necessary costs and expenses incurred by the Debtor through November 5, 2004 in accordance with the Debtor's Projected Statement of Cash Receipt and Expenditures attached to this Order as Exhibit B (the "Budget"); provided that no advances may be made on a line-item basis in an amount in excess of 10% of each line-item as contained in the Budget without the prior written consent of Wells Fargo. Further, for the purposes of this interim order, indebtedness other than the real estate loan, shall in no event exceed \$865,000.00 in total, with indebtedness relating to non-packaging inventory to be limited to a maximum of \$365,000.00 and indebtedness relating to packaging inventory limited to a maximum of \$38,000.00.

2. The Debtor shall provide, for the benefit of Wells Fargo and as adequate protection for its collateral, an availability reserve in the amount of \$6,000 no later than September 20, 2004; and an additional availability reserve in the amount of \$6,000 no later than October 20, 2004 both in form and substance acceptable to Wells Fargo. These reserves are in addition to any reserves provided under the First Stipulation, Second Stipulation, Third Stipulation and Fourth Stipulation.

3. The Debtor shall further agree to hold the confirmation hearing on its plan of reorganization as scheduled on September 29, 2004.

4. The terms of the DIP Financing are fair and reasonable, have been negotiated by the parties at arms-length and in good faith, and are the best available to the

Debtor under present market conditions and the Debtor's financial circumstances. The obligations incurred by the Debtor pursuant to the DIP Financing are incurred by the Debtor and extended by Wells Fargo in good faith within the meaning of Section 364(e) of the Bankruptcy Code.

5. To secure the payment of the obligations under the DIP Financing, and to the extent that there is a diminution in the value of Wells Fargo's interest in the Prepetition Collateral in excess of amounts paid over to Wells Fargo on account of collections with respect to the Prepetition Collateral, and to protect interests of the Economic Development Partnership of Wright County and the City of Rockford, Wells Fargo shall be and hereby is granted pursuant to Section 364(d) of the Bankruptcy Code, a first priority attached and perfected lien and security interest in all present and after-acquired property of the Debtor or the Debtor's estate of any nature whatsoever (including, but not limited to, the Prepetition Collateral), and the Internal Revenue Service, the Economic Development Partnership of Wright County and the City of Rockford are hereby granted attached and perfected liens and security interests in all present and after-acquired property of the Debtor or the Debtor's estate subordinate to Wells Fargo in the same order, dignity and priority as the parties' prepetition liens, but excluding causes of action created under chapter 5 of the Bankruptcy Code in favor of the Debtor (the "Postpetition Security Interest"); provided however, that the Postpetition Security Interest shall be subject and subordinate to: (a) valid and perfected liens on prepetition collateral existing as of November 14, 2003 (the "Petition Date"); (b)

quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court.

6. The Debtor is hereby authorized to use cash collateral of any entity claiming a security interest in such collateral in accordance with Section 363 of the Bankruptcy Code. Notwithstanding anything contained in this paragraph to the contrary, the Debtor shall comply with the requirements of Paragraph 5 hereof with respect to amounts collected by the Debtor on account of Prepetition Collateral which are not subject to a valid and perfected lien prior to Wells Fargo's lien granted under the Security Agreement.

7. Wells Fargo's commitment to provide advances or other credit accommodations under the Prepetition Credit Agreement terminated as of the Petition Date. All amounts collected by the Debtor on account of Prepetition Collateral which are not subject to a valid and perfected lien prior to Wells Fargo's lien granted under the Security Agreement, and all other proceeds of the sale or other disposition of Prepetition Collateral which are not subject to a valid and perfected lien prior to Wells Fargo's lien granted under the Security Agreement, shall be immediately turned over to Wells Fargo by the Debtor and applied to the Prepetition Obligations secured thereby.

8. The liens and security interest granted to Wells Fargo hereunder as security for the DIP Financing shall be deemed to be perfected as of the date this Order is entered without the need to file any financing statement or take any further action.

9. All obligations of the Debtor to Wells Fargo under the DIP Financing shall have superpriority administrative expense status under the provisions of



Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses incurred in this case, except for the quarterly fees due pursuant to 28 U.S.C. § 1930.

10. Pursuant to Section 364(e) of the Bankruptcy Code, neither the reversal or modification of this Order, nor the entry of an order confirming a plan of reorganization in the Debtor's case or the conversion of the Debtor's case to a case under Chapter 7 of the Bankruptcy Code shall affect the validity or priority of Wells Fargo's administrative expenses status with respect to or liens and security interest as security for the Debtor's obligations under the DIP Financing, as approved by this Order.

11. The Debtor shall maintain all of its accounts, including all collateral, demand, deposit and debtor-in-possession accounts, in the same manner and with the same parties as required under the Prepetition Credit Agreement, or as otherwise agreed by Wells Fargo and the Debtor, and shall take such actions as are necessary to obtain the Court's approval of such accounts.

12. The Debtor shall provide Wells Fargo, the Economic Development of Wright County, and the City of Rockford with the following reports and documents:

- (a) All reports the Debtor is currently providing or obligated to provide to Wells Fargo, by the deadlines set forth in the Prepetition Credit Agreement;
- (b) Monthly operating reports and other documents filed with the United States Trustee, such reports to be mailed to Wells Fargo on the same day that the report is sent to the United States Trustee;
- (c) A report of the Debtor's actual receipts and expenditures compared against the Budget, by 12:00 noon Wednesday of each week, with respect to actual receipts and expenditures for the week ending immediately prior; and

- (d) Other such information as Wells Fargo may reasonably request to be provided within a reasonable time period after such request is made.

13. Upon the failure by the Debtor to comply with any of the terms and conditions contained in this Order, which failure is not cured within two (2) business days after written notice of such failure is served by Wells Fargo on the Debtor and its counsel, Wells Fargo shall be entitled to an order granting it relief from the automatic stay, upon submission to this Court of an affidavit indicating such failure and lack of cure. The Debtor's only defense to such relief shall be that no default exists under this Order. Nothing in the Order shall limit Wells Fargo's right to otherwise seek relief from the automatic stay or take any other action in connection with the Debtor's bankruptcy case on any other grounds.

14. A continued hearing on the Motion is scheduled for November 8, 2004 at 9:30 a.m. in United States Bankruptcy Court, at 200 U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

Dated: September 7, 2004

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The Honorable Gregory F. Kishel  
Chief Judge, United States Bankruptcy Court

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 09/07/04 Lori Vosejpka, Acting Clerk, By jrb
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## **EXHIBIT A**

# Daily Collateral Report

WELLS  
FARGO

Wells Fargo Business Credit, Inc.

	AR - Pre DP	AR - LIP	Inventory	Packaging	Revolving Total
1. Beginning Collateral					
2. Gross Sales from _____ to _____ (add) Invoice #s from _____ to _____					
3. Credit Memos (subtract)					
4. Net Collections from _____ to _____ (subtract)					
5. Adjustments					
a. Returns and Allowances (subtract)					
b. Discounts (subtract)					
c. Unassigned Cash (add)					
d. Other Adjustments (add or subtract)					
6. Inventory Reduction (_____ % of Sales)					
7. Inventory Additions from _____ to _____					
8. New Collateral Balance	\$0.00	\$0.00	\$0.00	\$0.00	
9. Ineligible - Regular (subtract) as of _____					
10. Ineligible - Special Today's change: _____					
11. Eligible Collateral (line 8 less lines 9 & 10)	\$0.00	\$0.00	\$0.00	\$0.00	
12. Advance Rate	80%	80%	50%	20%	
13. Available Collateral (line 11 multiplied by line 12)	\$0.00	\$0.00	\$0.00	\$0.00	
14. Line Limits	\$865,000.00	\$865,000.00	\$335,000.00	\$38,000.00	\$865,000.00
15. Available for Borrowing (lesser of line 13 or 14)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
16. Previous Loan Balance					\$0.00
17. Less Collections (line 4)					
18. Add: Advances from _____ to _____					
19. Interest, Fees and Charges during period					\$0.00
20. New Loan Balance (line 16 - 17 + 18 + 19)					
21. LCo and Loan Reserves (subtract)					\$0.00
22. Availability Remaining (line 15 - line 20 - line 21)					

The undersigned represents and warrants that the foregoing information is true and complete and that the receivables and inventory reflected herein comply with the representations and warranties set forth in any and all Credit and/or Security Agreements and Supplements or Amendments, if any, thereto between the undersigned and Norwest Bank Minnesota, N.A., Wells Fargo Business Credit, Inc. or Wells Fargo Credit, Inc. The undersigned further acknowledges and agrees that any references to Available Collateral or amounts available for borrowing are subject to the terms and conditions of any such Credit and/or Security Agreement. To the extent that the advance herein requested will be used by the undersigned in whole or in part for the payment of wages, the undersigned has paid or deposited or is able to pay and intends to make timely payment or deposit of all taxes required to be deducted and withheld from said wages.

Borrower Name	Authorized Signature		Type
Shark Industries, Ltd.			
Report Number	Report Date		
Order Received	Checked	Approved	Posted

## **EXHIBIT B**

SHARK INDUSTRIES  
9 WEEK BUDGET  
9/6/04-11/5/04

<u>80/50/20% Advance Rates</u>	<u>Week of 9/06/04</u>			<u>Week of 9/13/04</u>			<u>Week of 9/20/04</u>			<u>Week of 9/27/04</u>		
	<u>#####</u>	<u>Cash</u>	<u>Sales</u>	<u>#####</u>	<u>Cash</u>	<u>Sales</u>	<u>9/24/2004</u>	<u>Cash</u>	<u>Sales</u>	<u>10/1/2004</u>	<u>Cash</u>	<u>Sales</u>
Pre and Post Petition AR	525	25	80	580	41	80	635	200	80	515	25	80
Ineligible	49			41			41			41		
Eligible	476			539			594			474		
Advance Rate	0.8			0.8			0.8			0.8		
Available	380.8			431.2			475.2			379.2		
Non Packaging Inventory	683			683			683			683		
Ineligible	97			97			97			97		
Eligible Non Packaging Inventory	586			586			586			586		
Advance Rate	0.5			0.5			0.5			0.5		
Available	293			293			293			293		
Packaging Inventory	200			200			200			200		
Ineligible	0			0			0			0		
Eligible Packaging Inventory	200			200			200			200		
Advance Rate	0.2			0.2			0.2			0.2		
Available	38			40			40			40		
Total Available	711.8			764.2			808.2			712.2		
Pre and Post Petition Loans	671			728			764.7			649.7		
Net Available	40.8			36.2			43.5			62.5		
	36			36			42			42		
Available Less Reserve	4.8			0.2			1.5			20.5		

SHARK INDUSTRIES  
9 WEEK BUDGET  
9/6/04-11/5/04

80/50/20% Advance Rates	Week of 10/04/04			Week of 10/11/04			Week of 10/18/04			Week of 10/25/04			Week of 11/01/04		
	10/8/2004	Cash	Sales	#####	Cash	Sales	#####	Cash	Sales	#####	Cash	Sales	11/5/2004	Cash	Sales
Pre and Post Petition AR	570	25	80	625	25	80	680	200	80	560	30	80	610	25	80
Ineligible	41			41			41			41			41		
Eligible	529			584			639			519			569		
Advance Rate	0.8			0.8			0.8			0.8			0.8		
Available	423.2			467.2			511.2			415.2			455.2		
Non Packaging Inventory	683			683			683			683			683		
Ineligible	97			97			97			97			97		
Eligible Non Packaging Inventory	586			586			586			586			586		
Advance Rate	0.5			0.5			0.5			0.5			0.5		
Available	293			293			293			293			293		
Packaging Inventory	200			200			200			200			190.8		
Ineligible	0			0			0			0			0		
Eligible Packaging Inventory	200			200			200			200			190.8		
Advance Rate	0.2			0.2			0.2			0.2			0.2		
Available	40			40			40			40			38.16		
Total Available	756.2			800.2			844.2			748.2			786.36		
Pre and Post Petition Loans	673.4			741.4			790.4			689			719		
Net Available	82.8			58.8			53.8			59.2			67.36		
	42			42			42			48			48		
Available Less Reserve	40.8			16.8			11.8			11.2			19.36		
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U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

I, Judy Brooks, hereby certify that I am judicial assistant to Gregory F. Kishel, Chief Bankruptcy Judge for the District of Minnesota; that on September 7, 2004, true and correct copies of the annexed:

ORDER

were placed by me in individual official envelopes, with postage paid; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last known addresses appearing hereinafter; that said envelopes were sealed and on the day aforesaid were placed in the United States mails at St. Paul, Minnesota, to:

OFFICE OF THE U.S. TRUSTEE  
1015 U.S. COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

SHARK INDUSTRIES LTD  
6700 BLECK DRIVE  
ROCKFORD MN 55373

STEVEN B. NOSEK, ESQ.  
SUITE 300, 701 FOURTH AVENUE SO.  
MINNEAPOLIS, MN 55415

BURTON, MATTHEW R  
100 S 5TH ST STE 2500  
MINNEAPOLIS MN 55402

KALLA, MARK J  
50 S 6TH ST STE 1500  
MINNEAPOLIS MN 55402

and this certificate of service was made by me.

*/s/ Judy Brooks*  
Judy Brooks

Filed on September 7, 2004 Lori Vosejpka, Acting Clerk By jrb, Deputy Clerk
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